

did not keep contemporaneous notes and has no independent recollection of the interview. Mr. Nussbaum has no independent recollection of the interview. The lack of corroborating evidence regarding the circumstances surrounding the preparation of the insert, when viewing these events in their totality, provided an insufficient basis to warrant prosecution.

A. There Is No Evidence, Other Than the Insert, That Mr. Nussbaum's Limited Involvement in the Hiring of Craig Livingstone Included a Discussion With Mrs. Clinton About Mr. Livingstone or That He Knew Who Hired Mr. Livingstone.

There is simply no evidence, other than the insert, of any discussions with Mrs. Clinton, or of any substantial knowledge or involvement of Mr. Nussbaum or Mrs. Clinton in hiring Mr. Livingstone. Even the content of the insert itself, on which the Attorney General's application for the appointment of an independent counsel substantially relied, is not in itself substantial evidence.

The insert arguably does not contradict Mr. Nussbaum's testimony because it does not report that Mr. Nussbaum had a discussion with Mrs. Clinton about Mr. Livingstone and does not contradict a reasonable interpretation that Mr. Nussbaum did not "know who brought Mr. Livingstone into the White House."

The evidence demonstrates that Mr. Livingstone's appointment was almost entirely due to the efforts of individuals other than Mr. Nussbaum. Ms. Mills, Ms. Varney, Mr. Kennedy, Mr. Nussbaum, and Mr. Livingstone all essentially deny the substantial